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Supreme Court, U.S.
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UNITED STATES SUPREME COURT

OCTOBER, 1991 TERM

SUZANNE CLARK,

PETITIONER

vs.

GEORGE H. CLARK, EXECUTOR,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

DID THE COURTS OF IOWA FAIL OR REFUSE TO ACCORD TO SUZANNE CLARK FUNDAMENTAL PROPERTY RIGHTS GUARANTEED TO HER BY THE FOURTEENTH AMENDMENT, U. S. CONSTITUTION?

LIST OF PARTIES TO THE PROCEEDING

Suzanne Clark, Petitioner.

George H. Clark, Executor, Respondent.
(He is Executor of the Ferne R.
Clark Estate).

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GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

Date of the judgment or decree sought to be reviewed, and the time of its entry: Per Curiam opinion filed July 29, 1991.

The date of any order respecting a rehearing: Order denying rehearing filed September 18, 1991.

The date and terms of any order granting an extension of time within which to petition for writ of certiorari: None.

The statutory provision believed to confer on this Court jurisdication to review the judgment or decree in question by writ of certiorari: Title 28, United States Code, Section 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Article VI, "Supremecy clause" (in part):

> This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

United States Constitution, Fourteenth Amendment, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of any State wherein they reside. No State shall make or enforce any law which shall

abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS INVOLVED

Iowa Code, Section 633.385, par. 2:

In all cases of sale of real property by a personal representative under order of court, the surplus of the proceeds of such sale remaining after the payment of debts and charges shall be deemed to be real property and disposed of in the same proportions as the real property would have been if it had not been sold.

STATEMENT OF THE CASE

From 1974 to 1988, Suzanne Clark, Petitioner here, lived with and cared for her aging mother, Ferne R. Clark.

Ferne owned a single-family home located in Ames, Iowa. In 1986, she gave her son, George H. Clark, a lawyer, a power of attorney, so that he could negotiate a $10,000 loan on behalf of Ferne; the loan was secured by a mortgage on Ferne's homestead.

Late the following year, George listed Ferne's homestead for sale with a real estate broker, claiming he had to do so in order to get Title XIX to assist with Ferne's expenses in a nursing home. Ferne knew about the listing; she did not know, however, that on Jan. 29, 1988, George entered into a contract for the sale of her house.

Over the years, Ferne had promised to give Suzanne a life estate in the homestead. On March 31, 1981, Ferne executed a will which included the promised life estate for Suzanne. When Suzanne learned of the sale contract that George had executed in Ferne's name, pursuant to his power of attorney but without telling Ferne, Suzanne sought legal advice.

Suzanne's attorney drafted three documents, all of which Ferne duly executed. On February 20, 1988, Ferne signed a Deed of Life Tenancy, formally conveying a life estate in the homestead to Suzanne. On the same occasion, Ferne executed a power of attorney for Suzanne, which also had the effect of revoking the power of attorney she had earlier given George. Ferne immediately

gave both of these documents to Suzanne, who had them recorded on Feb. 22, 1988. The Deed of Life Tenancy is reproduced in the Appendix herein, and copies of the Deed of Life Tenancy are being filed as a lodging in the Office of the Clerk, U. S. Supreme Court.

On Feb. 25, 1988, Ferne executed a codicil to her 1981 will. The codicil made no change in Ferne's dispositive arrangements, but it did give Suzanne an option to buy out the other remaindermen; such an option had been included in the Deed of Life Tenancy Ferne had given Suzanne five days previously.

About two months later, on Apr. 21, 1988, Ferne died. Ferne had never been told about the contract for the sale of her homestead, which was still executory at the time of her death; under the

terms of the contract, performance was not due until May 1, 1988, ten days after Ferne passed away. The real estate purchase agreement has not been reproduced in the Appendix, but copies of the contract are being filed as a lodging in the Office of the Clerk, U. S. Supreme Court

Following Ferne's death on Apr. 21, 1988, Suzanne Clark, who had Ferne's last will and testament, and the codicil, in her possession, immediately filed said documents for probate in the District Court for Story County, Iowa, identified herein as the trial court. Suzanne Clark also immediately sought a determination in the trial court as to her rights with respect to the home-

stead property, which she feared George Clark, as Executor, was about to convey to the purchasers under the contract. She asked for, and was granted, a trial-type hearing.

The trial court heard testimony and received various exhibits in evidence, including the Deed of Life Tenancy. On June 2, 1988, the trial court issued a decree which included findings of fact to the effect that

> The Life Tenancy Deed and the Codicil either gave a life estate to Suzanne or ratified the will provisions to that effect.

The trial court went on, however, to order specific performance of the sale contract by George Clark as Executor of the Ferne Clark Estate. Suzanne was ordered to vacate the homestead,

unless she posted a $20,000 appeal bond.

Suzanne Clark posted a $20,000 bond she obtained from a surety company, Merchants Mutual Bonding Co. This was in June, 1988. On Aug. 23, 1989, the Iowa Court of Appeals affirmed the trial court's decision. Suzanne Clark sought a rehearing from the Court of Appeals; this was denied summarily on Sept. 6, 1989. Suzanne Clark then sought further review from the Iowa Supreme Court; this was summarily denied on Nov. 3, 1989.

Suzanne Clark then sought a stay from the Supreme Court of Iowa to permit her to file a Petition for Certiorari with the U. S. Supreme Court. This stay request was referred to the Iowa Court of Appeals, which denied it on Nov. 15, 1989.

Suzanne Clark then submitted a motion for stay to the Hon. Harry A. Blackmun, Justice of the United States Supreme Court; when this was denied, she requested that her stay request be submitted through the Chief Justice to the Court; the stay motion was finally denied on Dec. 4, 1989.

In the meantime, the Executor, George Clark, went ahead on Nov. 27, 1989 and conveyed the Ferne Clark homestead property to the contract purchasers in exchange for the $70,000 purchase price, via Court Officer Deed. This Deed has also been reproduced in the Appendix herein, and copies are being filed as a lodging with the Office of the Clerk, U. S. Supreme Court. George Clark, the Executor, had his sister, Suzanne Clark, forcibly evicted

from the property in which she, by Deed, had a life tenancy.

Following his sale of the Clark homestead property, Suzanne Clark then asked the Executor, George Clark, to pay over to her the life tenant's share of the $70,000 purchase price. George countered by seeking a judgment against Suzanne, and her surety (Merchants), for the rental value of the homestead which Suzanne had occupied during the pendency of her appeal.

The trial court sided with George, ruling that Suzanne did not have a life estate in the homestead. Suzanne Clark attempted to show that the question of her life estate had already been established in the trial court's June, 1988 decision and was now res judicata. The

trial court refused to reconsider and Suzanne made two attempts to appeal to the Iowa Supreme Court; both were dismissed without opinion. Another trial court judge considered the petition for declaratory judgment that Suzanne filed seeking her share of the $70,000 purchase price; that judge also rejected Suzanne Clark's claim for her life tenant's share of the proceeds from the sale of the homestead property.

Suzanne appealed the final judgments of the trial court to the Supreme Court of Iowa. On July 29, 1991, the Iowa Supreme Court affirmed the trial court.

On August 12, 1991, Suzanne filed a Petition for Rehearing in the Iowa Supreme Court. On September 18, 1991, the Iowa Supreme Court denied a re-

hearing. Suzanne Clark now seeks a Writ of Certiorari from the United States Supreme Court.

ARGUMENT

THE COURTS OF IOWA HAVE REFUSED TO ACCORD TO SUZANNE CLARK FUNDAMENTAL PROPERTY RIGHTS GUARANTEED HER BY THE FOURTEENTH AMENDMENT, U. S. CONSTITUTION.

Supreme Court Rule 10 states that "A petition for a writ of certiorari will be granted only when there are special and important reasons therefor." Three situations are specified in the rule to indicate "the character of reasons that will be considered" in deciding whether the Supreme Court's discretion will be exercised in a particular case. Paragraph (c) states one of the reasons this way:

> When a state court . . . has decided an important question of federal law which has not been, but should be, settled by this

> Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

The Fourteenth Amendment, U. S. Constitution, is the fundamental guarantee of the right of a U. S. citizen to own and enjoy property, free from interference by any person acting under color of State government authority.

> No State shall . . . deprive any person of . . . property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

In the instant case, the Courts of Iowa have simply ignored the Fourteenth Amendment, U. S. Constitution. Instead of recognizing Suzanne Clark's

vested property rights, guaranteed by the Fourteenth Amendment which Suzanne Clark has sought to rely on, the Courts of Iowa have ruled against Suzanne Clark and have failed to even mention her Fourteenth Amendment contentions. Thus, instead of deciding federal questions in ways that conflict with applicable decisions of the United States Supreme Court, the Courts of Iowa have simply not decided the federal questions at all. Nevertheless, Suzanne Clark urges that the failure to decide federal questions which she has raised constitutes a decision on the part of the Iowa courts to decide those questions against her, and therefore amounts to a conscious decision to decide federal questions in a way that conflicts with applicable decisions of the United States

Supreme Court.

From 1974 to 1978, Suzanne Clark stayed with her aging mother in her home, taking care of her various needs as explained in testimony to the trial court. The services she performed constituted the main consideration given by Suzanne Clark in exchange for her mother's repeated promises that she would have a life estate in the homestead. Ferne Clark included the specific bequest of a life estate for her daughter, Suzanne, in her will, which she executed March 31, 1981.

On Nov. 11, 1986, Ferne Clark gave her son George Clark, a lawyer, power of attorney, so that he could negotiate a $10,000 bank loan on her behalf to help pay the costs of her care; at that time, Ferne was living

in her home and was being cared for by Suzanne. About a year later, however, Ferne's deteriorating health, along with a diagnosis that she had cancer, led to Ferne's confinement in a nursing home, where Suzanne continued to help with Ferne's care.

George Clark listed Ferne's home for sale with a real estate agent, ostensibly for the purpose of getting Title XIX to help pay for Ferne's nursing home expenses. However, without telling Ferne, George on Jan. 29, 1988, used his power of attorney to contract for the sale of Ferne's residence.

Suzanne, fearing the loss of the promised life estate, for which she had labored 14 years, consulted

an attorney. Her attorney drafted a Deed of Life Tenancy, which Ferne executed before a Notary and delivered to Suzanne on Feb. 20, 1988. Suzanne had the deed recorded on Feb. 22, 1988.

Ferne also executed a power of attorney to Suzanne which specifically revoked George's power of attorney. Ferne died two months later, on April 21, 1988.

At the time she conveyed the life estate to Suzanne by means of the Deed of Life Tenancy (reproduced in the Appendix herein and also filed as a lodging with the Office of the Clerk, U. S. Supreme Court), Ferne clearly held the legal title to her homestead. Suzanne was in sole possession of the property, since Ferne was then living in the nur-

sing home. Suzanne remained in sole possession of the Clark homestead until George had her forcibly evicted by the sheriff, on Dec. 1, 1989.

The contract George signed was still executory at the time of Ferne's death on April 21; performance of the contract was not due, according to its terms, until May 1, 1988. The contract George signed was never recorded. (Copies of the contract or "purchase agreement" which George Clark signed on Ferne's behalf are being filed as a lodging with the Office of the Clerk, U. S. Supreme Court.)

Following Ferne's death on April 21 and before the date of performance set by the contract (May 1st), Suzanne went to court seeking a determination as to her rights to the homestead property.

She relied on **both** the Deed of Life Tenancy **and** Ferne's will, to which a codicil had been added on Feb. 25, 1988; both the deed and the will-codicil combination made substantially the same provision for a life estate in Suzanne in Ferne's homestead property; the Deed, however, was regarded by Suzanne as the conveyance of a present interest life estate fully vested two months prior to Ferne's death, leaving Ferne with the remainder interest which passed to Ferne's estate when she died on April 21, 1988.

Prior to any decision on the merits by the trial court, Suzanne Clark asserted her Fourteenth Amendment, U. S. Constitution rights to her property, based both upon the terms of the Deed of Life Tenancy and upon the terms of

Ferne's will and codicil. This was in a pleading filed May 16, 1988. The trial court, without mentioning the Fourteenth Amendment, did find, as a fact, that

> The Life Tenancy Deed and the Codicil either gave a life estate to Suzanne or ratified the will provisions to that effect. . . . (Findings of Fact, Conclusions of Law, Decree, June 2, 1988.)

The trial court, however, refused to recognize Suzanne Clark's claim of priority over the purchasers under the contract George had signed. Suzanne argued that she had priority as a bona fide purchaser because she had paid her consideration during the 1974-1988 period in the form of services, thereby acquiring a senior equity; moreover,

she argued that when Ferne conveyed a portion of her legal title to Suzanne on Feb. 20, Suzanne's legal life estate was bona fide, based on the fact that she obviously didn't have notice of the purchasers' equity of Jan. 29, 1988 at the time she had acquired her equity **during the 1974-1988 period.**

The trial court refused to recognize Suzanne as a bona fide purchaser and on appeal, the Iowa Court of Appeals refused to discuss this point; see Matter of Estate of Clark, 447 N.W.2d 549, 552-553 (Iowa App., 1989):

> Whether or not the district court erred in its application of the law of bona fide purchaser makes no difference in this case. Suzanne was not without notice of the contract between her brother,

George, and the [purchasers], and had no interest that arose prior to the interest of the [purchasers].

Suzanne Clark made every effort to get this obvious error corrected. The Iowa Court of Appeals denied a rehearing, the Iowa Supreme Court denied further review, the Court of Appeals and the U. S. Supreme Court denied motions for a stay, and finally, the Executor sold the property for the agreed-upon $70,000 price, carrying out the trial court's order granting specific performance of the contract which had been affirmed on appeal.

Having thus lost the property itself, Suzanne Clark now sought the **proceeds of the sale of her life tenancy** from the Executor. In the first

round of the litigation, the courts had ruled that the interest Suzanne had acquired via the Deed of Life Tenancy was junior to that of the purchasers under the contract with George, who had intervened in the litigation. However, as noted above, the trial court had made a finding of fact to the effect that Suzanne **was** a life tenant; in reliance on that finding of fact, **plus** the fact that she had **both** a Deed of Life Tenancy **and** a specific bequest of a life tenancy in Ferne's will, Suzanne continued in possession of the homestead property during the pendency of her appeal; Suzanne had also posted a $20,000 appellate bond, as required by the trial court.

Following his sale and conveyance

of the homestead property to the purchasers pursuant to court order, on on Nov. 27, 1989, the Executor refused to pay over to Suzanne that portion of the proceeds of the sale attributable to the sale of Suzanne's life estate. Instead, the Executor, Respondent here, took the position that Suzanne did not have a life estate, and that all of the proceeds of the sale belonged to the Ferne Clark estate and would be distributed to the residuary beneficiaries under the terms of Ferne's will. The Executor also took the position that because of the sale of the property, the property itself was no longer in the estate and Suzanne's life estate was therefore adeemed. The Executor also took the position that Suzanne owed rent to the Ferne Clark estate

for her occupancy of the homestead property during the pendency of the appeal.

When the Executor sought judgment from the trial court for the rent, Suzanne pointed out the fact that the trial court had already found that she was a life tenant, and that this finding of fact was res judicata, binding upon the Executor, who had been a party to the prior litigation. The trial court refused to consider the res judicata point. Suzanne then made two attempts to obtain review by the Iowa Supreme Court; both were dismissed. Eventually, the trial court ruled that the earlier finding of fact had been taken out of context, and concluded that Suzanne did not have a life estate in the property and thus was

not entitled to the life tenant's share of the sale proceeds. Suzanne appealed to the Iowa Supreme Court.

The Iowa Supreme Court ruled that the gift to Suzanne under the will had been adeemed, and affirmed the trial court. However, the Iowa Supreme Court **did not mention the Deed of Life Tenancy** at all.

In the Appendix herein, Suzanne Clark has identified twelve separate documents in which she set up and claimed her Fourteenth Amendment rights to her property. In one of those documents, her Brief in the instant appeal, she cited and relied on the Fourteenth Amendment U. S. Constitution, a total of fourteen times. Yet the Iowa Supreme Court did not even mention the Fourteenth Amendment, in ruling against her on every

point the Court ruled on; on some points, of course, the Iowa Supreme Court did not rule at all.

Suzanne Clark has also identified ten documents expressing rulings on the merits by the Iowa courts; of these, four were by the trial court, and six were by an appellate court.

At no point in any of the ten rulings by the Iowa courts was the Fourteenth Amendment, U. S. Constitution, even mentioned by the court. In every case, Suzanne Clark's Fourteenth Amendment rights were ignored by the judges.

Suzanne Clark had a right to rely on Article VI, U. S. Constitution, which states, in pertinent part, that

> This Constitution . . . shall be the supreme law of the land;

> and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

In one ruling by the Iowa Court of Appeals, the "constitutional claims" of Suzanne Clark were "addressed briefly" but were said to be "without merit." Matter of Estate of Clark, 447 N.W.2d 549, at 553 (Ia. App., 1989). There was no mention, however, of Suzanne Clark's Fourteenth Amendment claim that she had been denied

> . . . the legal effect of a deed of conveyance of a life tenancy in real property . . . thereby denying her of property rights for which she had given valuable consideration in the form of services over a

14-year period. (Appellant's Brief, Sept. 16, 1988, at page 49.)

In dicta, the Iowa Court of Appeals found nothing wrong with the Deed of Life Tenancy per se. The Court of App- said that Ferne Clark

> . . . did, in fact, convey to Suzanne, a life estate, by deed, on February 20, 1988. . . . Matter of Estate of Clark, 447 N.W.2d 549, at 551 (Ia. App., 1989).

This was consistent with the trial court's finding of fact, mentioned earlier, that said, in pertinent part:

> The Life Tenancy Deed . . . gave a life estate to Suzanne . . . (Findings of Fact, Conclusions of Law, Decree, June 2, 1988.)

But the trial court refused to recognize that Suzanne Clark had acquired

an enforceable right to the property prior to the rights the purchasers acquired by means of the contract with George Clark, who at that time was acting pursuant to a power of attorney from Ferne Clark, although without the latter's knowledge. The trial court concluded that

> Suzanne Clark's rights in the real estate by virtue of her mother's last will and testament or the deed of life estate are junior and inferior to any rights that the [purchasers] have acquired. . . .

The trial court then went on to decree that

> The executor of this estate is ordered and directed to convey title to the real estate to

> [purchasers] upon receipt of the balance due under the contract entered into on or about January 29, 1988. . . . (Findings of Fact, Conclusions of Law, Decree, June 2, 1988.)

On appeal, the Iowa Court of Appeals affirmed the trial court's decision; the Court of Appeals did not purport to modify that decision in any way. The trial court had not purported to decide the question of who was entitled to the proceeds of the sale of the property. The trial court had said nothing to indicate that it found anything wrong with the Deed of Life Tenancy. On the contrary, the trial court had found, in so many words, that the Deed of Life Tenancy had given Suzanne a life estate in the Clark homestead property.

In March, 1990, Suzanne Clark filed a petition for declaratory judgment in the trial court, seeking payment to her of the value of her life estate in the homestead which the Respondent Executor had sold. Suzanne Clark's petition was amended, with permission of the trial court, on July 20, 1990. The court was asked to take judicial notice of the Deed of Life Tenancy and of the file respecting the earlier litigation.

Following the Iowa Supreme Court's July 29, 1991 decision for which Suzanne Clark here seeks review on certiorari, Suzanne Clark made a timely request for a rehearing. The Petition for Rehearing set forth the following points:

1. The Supreme Court of Iowa's decision of July 29, 1991 violates the

constitutional rights of Suzanne Clark by denying her due process of law and the equal protection of the laws of the State of Iowa, citing the Fourteenth Amendment, U. S. Constitution. The Supreme Court of Iowa's Per Curiam opinion "fails to make any mention whatsoever of Appellant Suzanne Clark's constitutional rights, nor why the Court refuses to accord Appellant Suzanne Clark her constitutional rights." Pet. for Rehg., pp. 1-2.

2. The Supreme Court of Iowa's Per Curiam opinion "would work a **forfeiture** of property legally held and possessed by Appellant Suzanne Clark, as a **legal life estate** evidenced by a **deed**, duly recorded, continuously from Feb. 20, 1988 . . . to and through approximately Dec. 1,

1989, at which time the property was sold for $70,000 by the executor of the Ferne Clark Estate and conveyed by Court Officer Deed . . . pursuant to Court order." Pet. for Rehg, p.2.

3. Suzanne Clark has shown that she had a **legal life estate** conveyed to her for lawful consideration by deed duly recorded **two months prior** to decedent's death, from which she cannot legally be divested, citing Judson v. Corcoran, 17 U. S. 612, 15 L.Ed. 231 (1854). Pet. for Rehg., pp. 2-3.

4. Suzanne Clark has a due process right **NOT** to be **DEPRIVED OF HER PROPERTY**; the Supreme Court of Iowa's decision violates Suzanne Clark's due process rights because it assumes that the operative facts of the instant case

are the same as the operative facts that governed the prior litigation, whereas the operative facts here are not the same.

> In Matter of the Estate of Clark, supra, the facts, as determined by the trial court and affirmed upon appeal, were to the effect that the contract rights of the **purchasers** of the Clark homestead **predated** the asserted life estate of Suzanne Clark. The purchase contract was dated Jan. 29, 1988. . . . The life estate Suzanne Clark asserted dated either from a Deed of Life Tenancy, executed by the decedent Ferne Clark on Feb. 20, 1988 and recorded Feb. 22, 1988, OR from the decedent's

> will, which became operative on the day of her death, April 21, 1988; the trial court did not attempt to determine which, because he **upheld the contract** of Jan. 29, 1988. . . .
>
> In the instant case, **the purchasers are no longer parties**, and the law of the case that determined their rights to complete the purchase of the Clark homestead is **NOT determinative** of the present dispute, which involves the **PROCEEDS of** the **sale** of the Clark homestead by the executor pursuant to Court order. Pet. for Rehg., pp. 3-4.

5. The Petition for Rehearing pointed out a denial of the equal protection of State law, contrary to the

Fourteenth Amendment, U. S. Constitution:

> A clearly relevant State statute, Iowa Code Section 633.385, par. 2, cited . . . many times . . . is not even mentioned . . . . The Court's failure to accord . . . Suzanne Clark the benefits of Iowa Code Section 633.385, par. 2, constitutes a denial of the equal protection of the law, contrary to the U. S. Constitution, Fourteenth Amendment. Pet. for Rehg., pp. 4-5.

6. Suzanne Clark bases her claim to the proceeds of the sale of her life estate interest in decedent's property mainly upon the

Deed of Life Tenancy. The Deed of Life Tenancy created an immediate, present interest life tenancy vested in Suzanne Clark.

> At the time of this conveyance, Ferne Clark was the fee simple owner of the **legal title** to the property. Even though George Clark, pursuant to a power of attorney, had created an **equitable** interest in the property via his contract with the purchasers (which Ferne Clark didn't know about), that interest was **executory** in nature because the contract did not call for possession **until May 1, 1988** . . . whereas **Suzanne's** interest was **immediate** and **possessory**. But from

> and after Feb. 20, 1988, Suzanne Clark, by virtue of the Deed of Life Tenancy, was the vested, possessory, rightful owner of a **legal life estate** in the Ferne Clark property; . . . the only interest in the property which became part of **Ferne's estate** for distribution under the residuary clause of her will was the remainder interest. Pet. for Rehg., pp. 5-6.

7. The Court, in order to decide this case, needs to focus on the Deed Life Tenancy, which is not even mentioned in the Per Curiam opinion, and on this operative fact: at the time Ferne Clark executed the Deed of Life Tenancy to Suzanne, Ferne owned the

legal fee simple and had the sole right to receive the proceeds of the sale that George had negotiated, less the expenses of sale and the amount needed to clear the $10,000 mortgage on the property.

> For valuable consideration, as recited in the Deed, Ferne conveyed a **legal life estate** in the property to Suzanne. The Deed of Life Tenancy was promptly recorded. From that point on, Appellant Suzanne Clark was entitled to receive the proceeds of the sale of the property attributable to the **legal life estate.** Appellant Suzanne Clark's legal life estate was a **fully vested property right**, entitled to due process protection; it **cannot** be taken away from her

without violating her constitutional rights to due process. Pet. for Rehg., p. 6.

8. Following Ferne Clark's conveyance of the legal life estate to Suzanne, and up until the sale of the property by the Executor pursuant to court order, Suzanne Clark occupied the property as rightful life tenant, and cannot be required to pay rent therefor to Ferne's estate.

> To require Suzanne to pay rent for the occupancy of her own property is in violation of her constitutional rights to her own property and therefore in violation of her rights to **due process** under . . . U. S. Constitution, Fourteenth Amendment. Pet. for Rehg., p. 7.

The purchasers got the property in exchange for the purchase price; Suzanne is entitled to her life estate's share of the purchase price. To hold otherwise would permit the Executor of the Ferne Clark estate to distribute proceeds belonging to Suzanne, in clear violation of Suzanne's constitutional rights.

9. The will mentioned in the Per Curiam opinion could not have operated to divest Suzanne of a life estate fully vested BY DEED two months prior to decedent's death. Accordingly, ademption is not properly at issue here, since the operative document was the Deed of Life Tenancy and not the decedent's will. Pet. for Rehg., pp. 7-8.

As previously mentioned, the

Supreme Court of Iowa on Sept. 18, 1991 summarily denied Suzanne Clark's Petition for Rehearing. Suzanne now seeks a Writ of Certiorari from the U. S. Supreme Court, alleging that the Iowa Supreme Court has denied her due process of law and equal protection of State law, contrary to the Fourteenth Amendment, U. S. Constitution, and has, in fact, totally ignored Petitioner's rights to her property, guaranteed her by the Fourteenth Amendment, U. S. Constitution.

The situation here is reminiscent, on a very small scale, of the situation which confronted Congress in 1871, just 120 years ago. Then, with the Fourteenth Amendment part of the Constitution, there was a

need for legislation which allowed citizens immediate access to the Federal courts, because the State courts were unwilling or unable to enforce the rights guaranteed by the Fourteenth Amendment. Senator Pratt of Indiana "spoke of the discrimination against Union sympathizers and Negroes in the actual enforcement of the laws:

> "Plausibly and sophistically it is said the laws of North Carolina do not discriminate against them; that the provisions in favor of rights and liberties are general; that the courts are open to all; that juries, grand and petit, are commanded to hear and redress without distinc-

> tion as to color, race, or political sentiment. . . . "Vigorously enough are the laws enforced against Union people. They only fail in efficiency when a man of known Union sentiments, white or black, invokes their aid. Then Justice closes the door of her temples."

This quotation is from Monroe v. Pape, 365 U. S. 167, 178, 81 S.Ct. 473, 479, 5 L.Ed.2d 492 (1961).

In the instant case, discrimination against Suzanne Clark may be because she is a woman, or because she is asserting Federal constitutional rights in an Iowa State court; or, it may be that the Executor has been favored because he is

a lawyer, or because he is a male, or because, as an Executor, he is acting under color of State law. Suzanne Clark is not able to identify the reason why the Iowa courts have discriminated against her, but she has, without any doubt, been discriminated against by the Iowa courts in the instant case, and her Federal constitutional rights have been denied, or ignored, which amounts to the same thing.

Shelley v. Kraemer, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948), was a case involving the same Fourteenth Amendment property rights upon which Suzanne Clark relied. Writing for the Court, Chief Justice Vinson said:

> It cannot be doubted that among the civil rights intended to be protected from dis-

> criminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property. Equality in the enjoyment of property rights was regarded by the framers of that Amendment as an essential precondition to the realization of other basic civil rights and liberties which the Amendment was intended to guarantee. (334 U.S. 1, 10.)

In the instant case, even though she is a woman, Suzanne Clark clearly had the right to the life estate conveyed to her by the Deed of Life Tenancy executed by Ferne Clark two months prior to the latter's death. In failing to enforce

Suzanne's deed against the Executor, the Iowa courts discriminated against Suzanne and denied her the protection of her property rights guaranteed her by the Fourteenth Amendment, U. S. Constitution.

The action of State courts and State judicial officers in their official capacities is regarded as action of the State for Fourteenth Amendment purposes. Shelley v. Kramer, 334 U.S. 1, 14-15, 68 S.Ct. 836, 92 L.Ed. 1161 (1948), citing Virgina v. Reeves, 100 U.S. 313 (1880); Ex parte Virginia, 100 U.S. 339 (1880); the Civil Rights Cases, 109 U.S. 3 (1883), and others. The Executor of the Ferne Clark estate, Respondent here, is clearly a State actor for Fourteenth Amendment purposes. See Lugar v. Edmondson Oil Co., 457 U.S. 922, 929 and 937, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982),

and cases cited therein. In testimony, the Executor, George Clark, admitted that his power to convey title to the Ferne Clark property was as the Executor of Ferne's estate. Transcript of testimony, May 24, 1988, page 96.

In denying Suzanne Clark the vested rights of property created by the Deed of Life Tenancy, the Executor and the Iowa courts denied Suzanne Clark the equal protection of State law. See Shelley v. Kramer, 334 U.S. 1, 20, 68 S.Ct. 836, 92 L.Ed. 1161 (1948). Suzanne Clark also contends she has been denied due process of law.

Petitioner would conclude by summarizing her contentions with respect to the Fourteenth Amendment, U. S. Constitution, as follows:

Equal protection violations

1. Denial of legal effect of Deed of Life Tenancy. Conveyance by Ferne to Suzanne two months prior to death of Ferne created vested life estate in Suzanne entitled to Fourteenth Amendment protection. Brief of Appellant, pp. 22-26. See also Judson v. Corcoran, 17 U.S. 612, 15 L.Ed. 231 (1854). 16A C.J.S. Sec. 228, Constitutional Law, V., Vested Rights. ("A vested right is a title to the present or future enjoyment of property . . . The right must be immediate, absolute, complete, and unconditional, independent of a contingency . . .")

2. Refusal to enforce, or even discuss, Iowa Code Section 633.385, par. 2. Sale of real property by personal representative (Executor) pursuant to court

order converts realty to personalty; statute turns surplus of proceeds remaining after payment of debts and charges back into realty. Brief of Appellant, pp. 39-41. See statute at page 5 herein.

3. Judicial bias due to discrimination against Petitioner for one or more of the following reasons: 1) gender; Petitioner is a woman; 2) assertion of Federal constitutional rights; Petitioner has relied heavily on Fourteenth Amendment, U. S. Constitution, which all Iowa courts that have handled this litigation, at all stages, have failed to acknowledge or discuss; 3) bias in favor of Executor, which may be gender-based (he is a male), or which may be because he is an officer of the court (he is a lawyer) or because he is acting as decedent's

personal representative pursuant to State law. This point has not been raised below; Petitioner had a right to assume Iowa courts would comply with Article VI, U. S. Constitution ("Supremecy clause") and would eventually comply with the Fourteenth Amendment, U. S. Constitution; Petitioner also had a right to assume that Iowa courts would take necessary corrective steps with respect to gender bias, now under investigation by Equality in the Courts Task Force appointed by Iowa Supreme Court in December, 1990; see, e.g., "Task force targets allegations of bias in Iowa's legal system," Des Moines Sunday Register, Sept. 29, 1991, page 4B. See also Shelley v. Kramer, 334 U.S. 1, 20, 68 S.Ct. 836,

92 L.Ed. 1161 (1948) ("We hold that in granting judicial enforcement of the restrictive agreements in these cases, the States have denied petitioners the equal protection of the laws . . . We have noted that freedom from discrimination by the States in the enjoyment of property rights was among the basic objectives sought to be effectuated by the framers of the Fourteenth Amendment. . . . Because of the race or color of these petitioners they have been denied rights of ownership . . . enjoyed as a matter of course by other citizens . . .") The foregoing language would apply to Petitioner simply by substituting the word "gender" for the phrase "race or color," and by changing the

facts to read "denying judicial enforcement of the Deed of Life Tenancy" in place of "granting judicial enforcement of the restrictive agreements."

Due process violations

1. Judicial bias due to discrimination. (See point 3, above.) According to 48A C.J.S. Sec. 108, Judges, Bias or Prejudice, "The right to a judge free from bias or prejudice is based on the due process clause of the federal constitution, and on the constitutional right to a fair trial . . ." The federal courts are the primary guardians of constitutional rights. See separate opinion by Justice Brennan in Perez v. Ledesma, 401 U.S. 82, 104, 91 S.Ct. 674, 686,

27 L.Ed.2d 701 (1971), cited in Steffel v. Thompson, 415 U. S. 452, 463, 94 S.Ct. 1209, 1218, 39 L.Ed.2d 505 (1974). In the instant case, total failure of the Iowa courts at all levels to even mention the Fourteenth Amendment, U. S. Constitution, despite repeated reliance by Petitioner, and known gender bias by Iowa courts which is currently the subject of statewide hearings being conducted by the Equality in the Courts Task Force appointed by order of the Iowa Supreme Court in December, 1990, suggests that judicial bias or prejudice may have been involved in the instant case.

2. Petitioner has a due process right to have the Court judge her

case according to the facts of her case and the law pertaining to her case, rather than to assume the facts of her case are the same as those in another case involving a different party who is not a party to the instant case. See Petition for Rehearing, filed with the Iowa Supreme Court Aug. 12, 1991, pp. 3-5.

3. Failure to enforce Petitioner's Deed of Life Tenancy against the Executor deprived Petitioner of her vested rights of property without due process. Petitioner has a constitutional right to her property, and to have her property rights enforced by the Court. U. S. Constitution, Article VI, and Fourteenth Amendment. 16C C.J.S. Section 982, Constitutional Law, B., Property ("Under the

inhibitions of the federal Constitution . . . an owner cannot be deprived of his property or the use thereof without due process of law by any branch of government. . . . a taking of property without authority of law is no less lacking in due process when it is done by the judicial department of the government rather than by some other department thereof.") Petitioner's Deed of Life Tenancy conveyed to her, for stated consideration and not as a mere gift, a life estate in decedent's homestead; only the remainder interest passed to the decedent's estate. Petitioner cannot be compelled to pay rent to the Executor of the Decedent's estate for the use of her own life estate during the pendency of an appeal. Petitioner is en-

titled to recover the portion of the proceeds received from the sale of the homestead property by the Executor pursuant to Court order. Brief of Appellant, pp. 11-47. Decedent owned a legal fee simple in the property at the time of her conveyance of the legal life estate, unaffected by "purchase agreement" which created mere unrecorded equitable interest which remained executory at the time of decedent's death. The U. S. Supreme Court, in deciding whether the State is depriving a litigant of his property without due process of law in violation of the Fourteenth Amendment, where "the question turns upon the existence or terms of a contract . . . is bound to determine for itself whether there is a contract and to

ascertain its true meaning and effect. That rule is necessary in order that this court may properly enforce these provisions of the Constitution." Coolidge v. Long, 282 U.S. 582, 597, (1931), citing Railroad Commission v. Eastern Texas R. Co., 264 U.S. 79, at 86, and other cases cited therein.

In the instant case, there are three relevant documents which this Court can examine, and from which it can easily determine the rights of the parties. Two of the documents are the Deed of Life Tenancy of Feb. 20, 1988 from Ferne Clark to Suzanne Clark, and the Court Officers Deed of Nov. 27, 1989, by which George Clark as Executor conveyed the same property

from the Ferne Clark estate to the purchasers, pursuant to Court order. The two deeds are reproduced in the appendix herein and copies of the originals are being filed as lodgings with the Office of the Clerk, U. S. Supreme Court. A third relevant document is the "purchase agreement" which George Clark signed on behalf of Ferne Jan. 29, 1988 and which was clearly an executory contract, not intended to take effect until May 1, 1988. Copies of the purchase agreement are being filed as a lodging with the Office of the Clerk, U. S. Supreme Court. It will be apparent to anyone reading this document that it did not divest Ferne Clark of her ability to convey a portion of her fee simple

title to her property, the life estate Ferne did in fact convey to Suzanne by means of the Deed of Life Tenancy, and that it was intended to be executory until May 1, 1988, which turned out to be ten days after Ferne's death on April 21, 1988. Iowa court decisions ordering the Executor to specifically perform the purchase agreement could not have operated to deny Suzanne her life tenant's share of the sale proceeds.

SIGNATURE OF COUNSEL OF RECORD

Signed by: Paul D. Lunde

Paul D. Lunde, Attorney
P. O. Box 565, Ames, Iowa 50010
Phone (515) 292-8233 or 232-9900
A member of the Bar of this Court.

APPENDIX

IN THE SUPREME COURT OF IOWA

No. 275 / 90-1935

Filed July 29, 1991

IN THE MATTER OF THE ESTATE OF FERNE R. CLARK, Deceased

GEORGE CLARK III,

Appellee,

vs.

SUZANNE CLARK,

Appellant,

and

MERCHANTS MUTUAL BONDING CO.,

Surety-Appellant.

Appeal from the Iowa District Court for Story County, Timothy J. Finn and Paul E. Hellwege, Judges.

Appeal from district court orders determining that the beneficiary had no present life estate in certain real

estate, requiring the beneficiary to pay rent during her occupancy of the disputed property, and determining that the beneficiary had no life estate in the proceeds from the sale. AFFIRMED.

Paul D. Lunde, Ames, and Glenn C. Sedgwick, Ames, for appellant Suzanne Clark.

F. Richard Lyford of Dickinson, Throckmorton, Parker, Mannheimer & Raife, P.C., Des Moines, for appellant Merchants Mutual Bonding Co.

James A. Brewer of Newbrough, Johnston, Brewer, Maddux & Nadler, Ames, for appellee.

Considered by Schultz, P.J., and Lavorato and Andresen, JJ.

PER CURIAM.

Suzanne Clark, a beneficiary under

the will of Ferne Clark, appeals from several district court orders rejecting her claims concerning certain real estate. Upon our review of the record, we affirm the district court.

In June 1988, the district court entered a decree determining the rights of Suzanne Clark and John and Doris Elliott to certain real estate previously owned by the decedent, Ferne Clark. The district court determined that Ferne Clark had sold the property to the Elliotts prior to her death and that the will provision giving Suzanne a life estate in the property was insufficient to defeat the Elliotts' rights in the property. The court then ordered the estate to convey the property to the Elliotts upon receipt of the balance due on the contract. The

decree also required Suzanne to vacate the premises by June 15, 1988 or post bond. Bond was posted. The district court judgment was affirmed on appeal. In re Estate of Clark, 447 N.W.2d 549 (Iowa App. 1989).

Suzanne was removed from the property on December 1, 1989. Thereafter, the district court entered judgment in favor of the estate against Suzanne and her surety for $10,500, representing the fair rental value of the property.

In March 1990, Suzanne filed a petition for declaratory judgment requesting, in part, that the will bequest of a life estate in the disputed property to her not be adeemed and that she have a life estate in the proceeds from the sale of the life estate. The district court determined that the proceeds from

the sale of the homestead should pass under the will's residuary clause. Suzanne filed this appeal. The surety has filed a joinder in Suzanne's brief.

Suzanne contends on appeal that the district court failed to recognize that she had a life estate in the disputed property thereby permitting her to remain on the property rent-free and to receive the proceeds from the sale of the property.

We find that the June 1988 decree, as affirmed on appeal, has conclusively established that Suzanne does not have a life estate in the real estate conveyed by Ferne Clark to the Elliotts prior to Ferne's death. Avoca State Bank v. Merchants Mut. Bonding Co., 251 N.W.2d 533, 539 (Iowa 1977). We reject Suzanne's claims to a life es-

tate in the property.

We also agree with the district court that Suzanne was required to pay fair rental value for remaining in possession of the real estate after ordered to vacate by June 15, 1988. Despite Suzanne's claims to the contrary, the June 1988 decree, as affirmed, established that she was not entitled to possession after June 15, 1988. We affirm the district court on this issue.

Finally, we agree with the district court that Suzanne had no life estate in the proceeds from the sale. The district court properly found that the life estate in the property bequeathed to Suzanne was adeemed; the life estate did not give Suzanne an interest in the proceeds of the sale. Newbury v. Mc-

Cammant, 182 N.W.2d 147, 150 (Iowa 1970). We affirm the district court ruling determining that the proceeds from the sale of the property would pass under the will's residuary clause.

Accordingly, we affirm the orders of the district court in their entirety.

AFFIRMED.

IN THE SUPREME COURT OF IOWA

No. 90-1935

O R D E R

In the Matter of the

ESTATE OF FERNE R. CLARK, deceased,

GEORGE CLARK III,

Executor-Appellee,

SUZANNE CLARK,

Beneficiary-Appellant,

MERCHANTS MUTUAL BONDING CO.,

Surety-Appellant.

After consideration by the court, en banc, beneficiary-appellant's Petition for Rehearing in the above-captioned case is hereby overruled and denied.

Done this 18th day of September, 1991.

THE SUPREME COURT OF IOWA

/s/ Arthur A. McGiverin

Arthur A. McGiverin

Chief Justice

STATEMENT IN COMPLIANCE WITH
RULE 14.1(k) AS TO THE
STAGE IN THE PROCEEDINGS
WHERE THE FEDERAL QUESTION
WAS RAISED, ETC.

The Federal question involved in this proceeding is based upon the Fourteenth Amendment to the United States Constitution. Petitioner Suzanne Clark has cited the Fourteenth Amendment as follows:

1) In the trial court (District Court for Story County, Iowa), in a pleading titled "Reply to Answer; Answer to Counterclaim; Request to Amend Petition," filed May 16, 1988, page 6, paragraph 12, Suzanne Clark set up her Fourteenth Amendment claim as follows:

. . . the Court's failure to

to recognize her interests . . . would constitute state action violative of Suzanne Clark's constitutional rights to due process and equal protection of the law, guaranteed her by the United States Constitution, 14th Amendment. . . .

2. The Fourteenth Amendment, U. S. Constitution, was cited in the Notice of Appeal filed with the trial court on June 13, 1988.

3. The trial court, in its Findings of Fact, Conclusions of Law & Decree of June 2, 1988, made no mention at all of the Fourteenth Amendment, U. S. Constitution.

4. On appeal to the Supreme Court of Iowa, in her Brief filed Sept. 16, 1988, Division VI, pages 48-49, Suzanne

Clark set up her Fourteenth Amendment rights, in pertinent part, as follows:

> TRIAL COURT VIOLATED SUZANNE CLARK'S CONSTITUTIONAL RIGHTS BY DENYING HER DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAW. . . by: . . .
>
> 4) Denying her the legal effect of a deed of conveyance of a life tenancy in real property and thereby denying her of property rights for which she had given valuable consideration in the form of services over a 14-year period. . . .
>
> Appellant contends her rights to due process of state law and equal protection of state law have been denied by the trial court, in violation of the U.S. Constitution, 14th Amendment,

and urges the Iowa Supreme Court to grant her appropriate relief.

5. Petitioner again asserted her Fourteenth Amendment, U. S. Constitution rights in her Reply Brief, filed Nov. 23, 1988, at pages 20 and 25.

6. Petitioner's appeal was turned over to the Iowa Court of Appeals. The Court of Appeals said, in pertinent part:

> The constitutional claims of the appellant are without merit, but will be addressed briefly. . .

The Court of Appeals made no mention of the Fourteenth Amendment nor of the specific contention quoted in paragraph 4, above. The Court of Appeals affirmed the trial court. Matter of Estate of Clark, 447 N.W.2d 549 (Ia. App., 1989).

7. Petitioner Suzanne Clark on Aug. 29, 1989 filed a Petition for Rehearing with the Iowa Court of Appeals. She cited the Fourteenth Amendment, U. S. Constitution at pages 4 and 10 thereof. At page 10, Petitioner said, in pertinent part:

> The opinion . . . works a forfeiture, in violation of . . . vested property rights guaranteed her by the 14th Amendment, U. S. Constitution.

8. On Sept. 6, 1989, the Iowa Court of Appeals summarily denied the Petition for Rehearing.

9. Suzanne Clark then filed a timely Application to the Supreme Court of Iowa for Further Review of the Court of Appeals decision. Again, Suzanne Clark relied upon the Fourteenth

Amendment, United States Constitution, citing it at pages 12, 17, and 20. At page 17, in pertinent part, Petitioner contended:

> Once having obtained the deed of legal life tenancy, and having recorded it, Ms. Clark was then secure in her title . . . The Court of Appeals opinion would cause her to forfeit a secure, legal title, without legitimate due process of law, contrary to Ms. Clark's rights under the 14th Amendment, United States Constitution.

10. On Nov. 3, 1989, the Supreme Court of Iowa summarily denied further review of the Court of Appeals decision.

11. On Nov. 6, 1989, Suzanne Clark filed a Motion for Stay with the Supreme

Court of Iowa pursuant to 28 U. S. Code 2101(f). In paragraph 3, page 2, Suzanne Clark stated:

> At every stage of this proceeding, beginning with the trial court . . . Appellant has set up and claimed her rights to due process of law and to the equal protection of the laws guaranteed to her by the 14th Amendment, United States Constitution. At every stage, the courts of the State of Iowa have effectively denied . . . the protection of the 14th Amendment, U. S. Constitution, by ignoring the rights therein guaranteed to her.

The Iowa Supreme Court referred the Motion for Stay to the Iowa Court of Appeals, which on Nov. 15, 1989 summ-

arily denied the Motion for Stay.

12. Suzanne Clark then submitted a Motion for Stay to the Honorable Harry A. Blackmun, Justice of the United States Supreme Court. He denied the Motion for Stay, which was then submitted to the Court, through the Chief Justice. While this Motion was pending, the Executor of the Estate of Ferne R. Clark on Nov. 27, 1989 conveyed the property to which Suzanne Clark held a Deed of Life Tenancy to the purchasers in exchange for the $70,000 purchase price. The Court Officer Deed conveying the property is reproduced in this Appendix and copies thereof are being filed as a lodging with the Office of the Clerk, United States Supreme Court.

16. Since the property itself had been sold by the Executor before Suzanne

Clark had been able to get a Petition for Certiorari on file with the U. S. Supreme Court, Suzanne Clark then made demand upon the Executor to pay over to her the life tenant's share of the $70,000 purchase price. The Executor, Respondent here, countered by filing a Motion, on Jan. 4, 1990, seeking from Suzanne Clark or from her surety a judgment for the reasonable rental value of the property, which Suzanne Clark had continued to occupy during the period her appeal had been pending, and until the Executor sold it. Suzanne Clark resisted, citing inter alia the trial court's finding of fact to the effect that she was a life tenant, arguing therefore that she did not have to pay rent to the Clark Estate.

17. Counsel for Suzanne Clark, on

Mar. 11, 1990, filed a Petition with the trial court requesting the Executor be ordered to pay her the commuted value of her life estate in the property the Executor had sold for $70,000.

18. The trial court on Mar. 20, 1990 granted the Executor a judgment for $10,500 rent against Suzanne Clark.

19. Suzanne Clark on Mar. 20, 1990 filed a motion seeking reconsideration by the trial court of its Mar. 20, 1990 judgment for rent. She drew the trial court's attention to the fact that it had already determined that she was a life tenant, that the finding had been affirmed on appeal and was res judicata, and again cited the Fourteenth Amendment, U. S. Constitution guarantee of her property rights.

20. The trial court on April 4, 1990 denied Suzanne Clark's motion, again without mentioning the Fourteenth Amendment, U. S. Constitution.

21. On April 23, 1990, Suzanne Clark filed a petition for discretionary review with the Iowa Supreme Court, which was denied May 1, 1990. Suzanne Clark then filed a Notice of Appeal with the trial court. The Iowa Supreme Court dismissed the appeal, without stating a reason but presumably because the appeal was considered to be interlocutory.

22. On May 3, 1990, Suzanne Clark filed with the trial court a Motion for Separate Adjudication of Law points with reference to her filing of Mar. 11, 1990. In point 5, Suzanne Clark sought a ruling to the effect that the Deed of

Life Tenancy conveyed a life tenancy to her; the Executor had converted the real property to cash, and that she therefore had a life tenancy in the proceeds of the sale of the property. The Deed of Life Tenancy is reproduced herein, and copies thereof are being filed as a lodging with the Office of the Clerk, U. S. Supreme Court.

23. On Nov. 9, 1990, the trial court ruled against Suzanne Clark, again without mentioning her Fourteenth Amendment contentions.

24. On Nov. 15, 1990, Suzanne Clark filed a motion with the trial court requesting reconsideration. With reference to the Deed of Life Tenancy, Suzanne Clark said:

> The deed conveyed an immediate, vested life interest, to which

Suzanne Clark has a constitutional property right. See, Fourteenth Amendment, United States Constitution, and 42 U. S. Code Sec. 1983. This Court has no legal right to divest Suzanne Clark of the rights which the decedent vested in Suzanne, for stated, valuable consideration. Her rights having thus vested, while the decedent was still alive, there was no necessity whatsoever for Suzanne Clark to have filed a claim in the estate therefor at all, and from that simple fact, it follows that Suzanne Clark's claim could not be barred by a statute of limitations. Accordingly, the Court's Ruling in the premises was in

error; Suzanne Clark hereby requests that it be reconsidered and set aside.

25. In her motion of Nov. 15, 1990, Suzanne Clark further reminded the trial court that

> The effect of ordering the executor to make distribution according to the residuary clause of the will would be to divest Suzanne of vested property rights contrary to the 14th Amendment, U. S. Constitution. This Court, and the Executor as an officer of this Court, would be taking State action violative of the 14th Amendment, and would be violating the civil rights of Suzanne Clark, subjecting both the Court and the Executor to liability pursuant to Title 42, United States

Code, Section 1983. The Court is urged to reconsider its Ruling in the premises in light of Federal law having a bearing thereon.

26. In her motion of Nov. 15, 1990, Suzanne Clark further reminded the trial court that if it denied her the benefits of Iowa Code Section 633.385, Sec. 2,

> . . . it will be denying Suzanne Clark due process of State law and the equal protection of State law contrary to the 14th Amendment, United States Constitution.

27. On Nov. 29, 1990, the trial court overruled Suzanne Clark's motion for reconsideration, saying, in pertinent part, that

> In the opinion of the Court nothing has been raised in the instant Motion that was not pre-

sented in the Motion for Separate Adjudication of Law Points and subsequently ruled thereon.

The trial court again made no mention of the Fourteenth Amendment, U. S. Constitution.

28. On Dec. 24, 1990, Suzanne Clark filed a timely Notice of Appeal.

29. In her Brief to the Supreme Court of Iowa, filed (by mail) on Feb. 15, 1991, Suzanne Clark cited the U. S. Constitution, Fourteenth Amendment, a total of fourteen times, at pages 25, 26, 27, 34, 37, 39, 40, 41, 44, 45, 47, and 48 thereof.

30. In her Reply Brief to the Supreme Court of Iowa, filed Mar. 28, 1991, Suzanne Clark cited the U. S. Constitution, Fourteenth Amendment, at pages 1, 11, and 17 thereof.

31. On July 29, 1991, the Supreme Court of Iowa, in a Per Curiam opinion, affirmed the trial court. Again, there was no mention of Suzanne Clark's Fourteenth Amendment contentions. The opinion is set forth in this Appendix.

32. On Aug. 12, 1991, Suzanne Clark filed a timely Petition for Rehearing with the Supreme Court of Iowa. Suzanne Clark therein stated, again, the Fourteenth Amendment, U.S. Constitution rights that the Iowa Supreme Court's decision had violated.

33. On Sept. 18, 1991, the Supreme Court of Iowa summarily denied Suzanne Clark's Petition for Rehearing. There was no mention of the Fourteenth Amendment, U. S. Constitution. The Order denying a rehearing is set forth in this Appendix.

DEED OF LIFE TENANCY

KNOW ALL MEN BY THESE PRESENTS: That FERNE R. CLARK, a widow, of Ames, Story County, State of Iowa, in consideration of services rendered to me by my daughter, Suzanne, as further described hereinafter, do hereby convey unto my said daughter, SUZANNE CLARK, the use of my home, described as Lot Three (3) of Prather's Addition to Ames, Iowa, for the remainder of her life, or until she no longer desires to reside therein as her home, subject to the following:

(1) During her period of occupancy, my said daughter, Suzanne, shall have full responsibility for the

expenses of maintenance, operation, and taxes, with respect to said property.

(2) At any time during her period of occupancy, and during my lifetime, my said daughter, Suzanne, shall have the exclusive right and duty, acting alone, to borrow money against the value of my said home, and to give a mortgage as security for the repayment of any amount borrowed, the purpose of any such loan(s) being my care and maintenance. My said daughter, Suzanne, shall pay, out of the proceeds of such loan(s), such amounts as

are necessary therefor, from time to time, either directly or indirectly, and shall also pay therefrom such amounts of interest and principal with respect to such loan(s) as are necessary to maintain such loan(s) in good standing during my lifetime. Notwithstanding any contrary language in paragraph (1), my said daughter, Suzanne, is also authorized to use proceeds of such loan(s) to pay for major repairs or maintenance of my said home that she deems necessary or advisable, major repairs or maintenance being defined as

those in which the total, in any one instance, will reasonably be expected to exceed one thousand dollars ($1,000). My said daughter may advance the costs of minor repairs or maintenance (that is, those of less than one thousand dollars) from such loan proceeds, reimbursing the loan proceeds from her own funds within a reasonable time period.

(3) Within six (6) months following my death, my said daughter, Suzanne, shall turn over to my Executor any remaining balance of such loan proceeds not expended

for the purposes set forth in paragraph (2) herein, for application according to the terms of my Last Will and Testament, if any, and otherwise according to the laws of intestate succession.

(4) At any time during her period of occupancy, my said daughter, Suzanne, shall have an option to buy my home, at its appraised fair market value less any debts or liens thereon. If, at any time, any person purports to sell my said home on my behalf, my said daughter, Suzanne, shall have the right of first

refusal with respect thereto, duration of which shall, in each case, be for a period of 365 days following delivery to her of written notice and demand for her to exercise such right or lose the same. Her purchase of my said home pursuant to such right of first refusal shall be at a price equal to not less than the appraised fair market value thereof, and may, during my lifetime, be financed by a loan and mortgage as set forth in paragraph (2) herein.

(5) The conveyance to my said

daughter, Suzanne, of the life tenancy herein set forth, is in order to carry out the intent that I expressed in my Last Will and Testament executed on the 31st day of March, 1981, in paragraph III thereof.

(6) The good and valuable consideration for the life tenancy herein set forth, is as follows: During my lifetime, and especially following the death of my late husband, my daughter, Suzanne, forsaking the pursuit of her own interests, moved into my said home and lived with and cared for me, for many

years. Besides the valuable services she rendered to me, my said daughter paid, out of her own funds and earnings, a substantial part of the expenses for the maintenance and operation thereof, thus making it possible for me to continue to live in my said home during those years. As set forth in paragraph (5) herein, it was my intent to convey this life tenancy to my said daughter, Suzanne, on the 31st day of March, 1981, and it is my intent, insofar as legally possible, to have this conveyance construed as though it had

been made on said date.

Signed this 20th day of February, 1988.

/s/ Ferne R. Clark
FERNE R. CLARK, single

STATE OF IOWA, STORY COUNTY, SS:

On this 20th day of February, 1988 A.D., before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared FERNE R. CLARK, single, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that she executed the same as her voluntary act and deed.

/s/ Paul D. Lunde
Paul D. Lunde
NOTARY PUBLIC

Notarial Seal Book 246 Page 48

COURT OFFICER DEED

IN RE THE ESTATE OF FERNE R. CLARK, Deceased

Story County Probate No. 20646

KNOW ALL PERSONS BY THIS INSTRUMENT, that pursuant to the authority and power vested in the undersigned, and in consideration of the sum of $70,000.00 in hand paid, the undersigned in the capacity indicated below hereby conveys unto JOHN F. ELLIOTT and DORIS M. ELLIOTT, Husband and Wife, As Joint Tenants with Full Right or [sic] Survivorship, and not as Tenants in Common, the following described real estate situated in Story County, Iowa:

Lot Three (3) in Prather's Addition to Ames, Iowa.

Words and phrases herein, including the

acknowledgement, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

Signed this 27th day of November, 1989

ESTATE OF FERNE R. CLARK, DCSD.

by /s/ George H. Clark III

George H. Clark, III, Executor

STATE OF IOWA, STORY COUNTY) ss.

On this 27th day of November, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared GEORGE H. CLARK, III, to me personally known to be the identical person named in and who executed the foregoing instrument and acknowledged that he executed the same as his voluntary and [sic] deed.

/s/ Julie A. Miller

Notarial Seal

Notary Public in and for the State of Iowa

Supreme Court, U.S.
FILED
NOV 19 1991
OFFICE OF THE CLERK

(2)

No. 91-663

In The

Supreme Court of the United States

October Term, 1991

SUZANNE CLARK,

Petitioner,

vs.

GEORGE H. CLARK, EXECUTOR,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of Iowa

OPPOSITION OF GEORGE H. CLARK, EXECUTOR, TO PETITION FOR WRIT OF CERTIORARI

James A. Brewer
Newbrough, Johnston, Brewer, Maddux & Nadler
612 Kellogg Avenue
P.O. Box 847
Ames, Iowa 50010
Telephone: (515) 232-1761

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

LIST OF PARTIES TO THE ORIGINAL PROCEEDING

In the Matter of the Estate of
Ferne R. Clark,

Deceased,

George Clark, III, Executor

Respondent,

v.

Suzanne Clark,

Petitioner,

MERCHANTS MUTUAL BONDING COMPANY,

Respondent.

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STATUTES

§ 633.385, Code of Iowa 12

STATEMENT OF THE CASE

The Petitioner, Suzanne Clark, has, by omission and exaggeration, misstated the facts of the case.

This case has been through numerous hearings and trials involving two separate appeals to the Supreme Court of Iowa. The first case is entitled *In Re Estate of Ferne R. Clark,* 447 N.W.2d 549 (Iowa App. 1989). The second case, which is subject of the present proceeding, is entitled "In the Matter of the Estate of Ferne R. Clark," which was decided by the Supreme Court of Iowa on July 29, 1991, a copy of which is attached to the Petitioner's Petition for Writ of Certiorari pages A-1 to A-8.

The courts have carefully and thoroughly discussed the issues presented in this case and correctly decided that the Petitioner had no property rights of any kind in either the real estate of the decedent, which was sold under contract to a third party, or the proceeds received from the sale thereof.

The issues of the first case were fully and finally adjudicated and are now the law of the case. (*In Re Estate of Ferne R. Clark,* 447 N.W.2d 549 (Iowa App. 1989))

The present case presents only two issues:

a. Was judgment properly entered upon the supersedeas bond which was required by the district court since Suzanne Clark wished to remain upon the premises during the proceedings of the first appeal? Since the decision of the trial court was affirmed, Suzanne was required to pay fair rental value during the period she resided upon the

premises during the pendency of the first appeal proceeding in the Supreme Court.

b. Was Suzanne Clark entitled to a life estate in the proceeds received from the sale of the real estate in the Ferne Clark estate? In the first case of *In Re Estate of Ferne R. Clark*, 447 N.W.2d 549 (Iowa App. 1989), the Supreme Court determined that Suzanne Clark was not entitled to a life estate in the real estate and she now makes claim to a life estate in the proceeds, which the Supreme Court denied.

These issues in the present case were determined on very basic law and no unusual or unique approach was required to reach the court's decision.

The sequence of events is important to understand the approach and reasoning of the Supreme Court of Iowa.

1. Petitioner, Suzanne Clark, moved into the home of her mother, Ferne R. Clark, in 1974, after the death of the Petitioner's father. While the Petitioner resided with her mother, she paid no rent, but did share some expenses.

2. On March 31, 1981, the decedent, Ferne R. Clark, executed her Last Will and Testament, which contained the following bequest:

III.

I hereby give, devise and bequeath to my daughter, SUZANNE CLARK, the use of my home described as Lot Three (3) of Prather's Addition to Ames, Iowa, for the remainder of her life, or until she no longer desires to

reside therein as her home. During her period of occupancy, my daughter shall have full responsibility for the expenses of maintenance, operation and taxes.

3. On November 11, 1986, the decedent, Ferne R. Clark, granted to her son, George H. Clark III, a plenary Power of Attorney.

4. In November, 1986, George H. Clark III helped arrange for his mother to borrow $10,000.00 in exchange for a mortgage on her home to cover her medical care and expense.

5. The health of the decedent, Ferne R. Clark, deteriorated after November, 1986, and more money was required for her care.

6. Title XIX assistance was required and George H. Clark III applied for such assistance on behalf of his mother. One of the conditions that assistance would be provided was that the home would appraised and placed on the market for sale.

7. This was done and on December 2, 1987, George H. Clark III executed a listing agreement with a real estate broker, as Attorney-in-Fact for his mother, to sell the home. Suzanne Clark admitted in testimony that she knew of no other way to finance her mother's care than to sell the home, as required by the State of Iowa.

8. On January 19, 1988, George H. Clark III entered into a sale agreement, as Attorney-in-Fact for his mother, to sell the home to John and Doris Elliott.

9. The sale agreement between George H. Clark III, as Attorney-in-Fact for his mother, and the Elliotts contained the following condition:

   Cash upon possession – subject to sale of buyer's home located at 1208 Kellogg by February 15, 1988, or this offer shall become null and void.

10. On February 3, 1988, the Elliotts were informed that their home would be purchased by a third party.

11. On February 10, 1988, the Elliotts informed the realtor that they had sold their home and George H. Clark III was informed of this fact prior to February 15, 1988. All parties to the sale agreement considered the condition of the contract of sale to be fully satisfied.

12. The Petitioner, Suzanne Clark, drafted a Power of Attorney, a Deed of Life Tenancy and a Codicil to the Will of Ferne R. Clark, and submitted them to her mother for execution. On February 20, 1988, (22 days after the real estate in question had been conveyed by a real estate contract by George H. Clark III, Attorney-in-Fact for his mother to Elliotts) Ferne R. Clark executed in favor of Suzanne Clark a Power of Attorney and Deed of Life Tenancy of the real estate and, thereafter, executed a Codicil to her Will dated February 25, 1988.

13. The decedent, Ferne R. Clark, died April 21, 1988, her Last Will and Testament and Codicil were admitted to probate and George H. Clark III was appointed as executor on April 26, 1988.

14. On August 23, 1989, the Supreme Court affirmed the judgment of the trial court, holding that Suzanne Clark had no interest of any kind in the real estate which was sold to the third party, Elliotts.

15. No document, testamentary or otherwise, granted Suzanne Clark a life estate in the proceeds from the sale of the real estate.

16. On June 29, 1991, the Supreme Court of Iowa, in the present case, affirmed the trial court finding:

    a. That Suzanne Clark was rightfully required by the trial court to pay from the posted supersedeas bond the fair rental value for possessing the real estate during the pendency of the appeal; and

    b. The life estate in the real estate which was bequeathed to her in the Last Will and Testament of the decedent, Ferne R. Clark, had been adeemed and that the bequest, or any other document, did not give Suzanne Clark a life estate in the proceeds from the sale of the real estate.

SUMMARY OF ARGUMENT

1. That most if not all of the Petitioner's Constitutional objections were raised in the first case of *In Re Estate of Ferne R. Clark*, 447 N.W.2d 549 (Iowa App. 1989), which is now fully concluded.

2. The only issues in the present case are:

   a. Did the trial court properly enter judgment against the Petitioner upon the supersedeas bond which the Petitioner posted in the previous case of *In Re Estate of Ferne R. Clark,* 447 N.W.2d 549 (Iowa App. 1989) so that she could remain in possession of the real estate during the pendency of the prior appeal?

   b. Did the Iowa Court, without violating the Petitioner's Constitutional rights, properly determine that she was not entitled to a life estate in the proceeds from the sale of the real estate after determining in the prior case that the Petitioner was not entitled to a life estate in the real estate?

3. The Iowa Court fully and fairly decided all issues within the Constitutional standards of the Fourteenth Amendment to the United States Constitution.

4. That the Constitutional issue raised by the Petitioner is frivolous.

ARGUMENT

In the initial proceedings before the Court, the Petitioner continued to reside in the home located upon the real estate which is subject to the litigation, claiming a life tenancy ownership by virtue of the Deed of Life Tenancy and/or bequest in the Last Will and Testament of the decedent. These issues were fully discussed and decided against the Petitioner, Suzanne Clark. The final decision was issued by the Court of Appeals of the State of Iowa on the 23rd day of August, 1989. (*In Re Estate of Ferne R.*

Clark, 447 N.W.2d 549 (Iowa App. 1989). No petition for certiorari was made to the Supreme Court of the United States from this decision and the time has long elapsed when such petition could be timely filed under the Rules.

Thereafter, the District Court of Iowa entered a judgment upon the bond which had been filed by the Petitioner, Suzanne Clark, after the judgment was a finality in the previous case (*In Re Estate of Ferne R. Clark*, 447 N.W.2d 549 (Iowa App. 1989)). It was posted so she could continue to reside there during the pendency of the appellate procedures. After the Iowa Court of Appeals sustained the judgment of the lower court, the trial court determined that she owed a fair rental value during the period she resided at the home and assessed judgment against the Petitioner, Suzanne Clark, and Merchants Mutual Bonding Company in the amount of $10,500.00.

In addition, the District Court determined that Suzanne Clark not only did not have a life tenancy interest in the real estate, she also had no interest in the proceeds, either as life tenant or in any other manner. This was determined after the Petitioner was granted full trial and hearing and upon full review before the Supreme Court of Iowa.

The reasoning of the Supreme Court is set forth in its Per Curiam decision set forth in the appendix located at pages A-2 - A-8 of the Petitioner's Petition for Writ of Certiorari.

It is true that the Petitioner has mentioned on many occasions that the determination of the court involved a violation of the Constitutional rights of the Petitioner, but

other than the bare allegations, there was and is no substance to the claim of the Petitioner.

It is clear that the facts of the case do not and did not support a life estate in the proceeds in favor of the Petitioner of the proceeds received from the sale of the real estate.

The Supreme Court of Iowa correctly determined that the decree which was entered in the first case of *In Re Estate of Ferne R. Clark,* 447 N.W.2d 549 (Iowa App. 1989) conclusively established that the Petitioner did not have a life estate in the real estate. There was no evidence that the decedent, Ferne R. Clark, granted a life estate in the proceeds to the Petitioner. The Supreme Court affirmed the District Court and found no life estate in the proceeds and found that the life estate in the property bequeathed to Suzanne was adeemed and, therefore, she had no interest in the proceeds.

The approach and reasoning of the Supreme court is well established in law and supported by authority. Iowa follows the general law that a Last Will and Testament does not become effective until death and until that time, it is ambulatory only and is subject to change and revocation at any time prior to the death of the testator. *Duhme v. Duhme,* 260 N.W.2d 415 (Iowa 1977); *In Re Estate of Chapman,* 239 N.W.2d 869 (Iowa 1976).

The Petitioner has attempted to establish her claim also through a deed of life tenancy which was executed on February 20, 1988, approximately three weeks after the real estate sale contract was executed between the decedent, Ferne R. Clark, through her son as Power of Attorney, and the Elliotts. A deed of life tenancy cannot

operate retroactively. *Bohle v. Brooks*, 225 Iowa 980, 282 N.W. 351 (1938).

The Petitioner, Suzanne Clark, takes considerable space claiming that the Supreme Court misinterpreted the trial court and its own decision in the previous decision. *In Re Estate of Ferne R. Clark*, 447 N.W.2d 549 (Iowa App. 1989). Simply stated, the Petitioner, Suzanne Clark, has taken a statement out of context and misconstrued it to her own interest, which is not a fair and accurate interpretation of either the decision of the trial court or the Supreme Court. The previous appeal is final. After a judgment of a court becomes final, it is the law of the case. *Avoca State Bank v. Merchants Mutual Bonding Co.*, 251 N.W.2d 533, 539 (Iowa 1976).

The phrase relied upon by the Petitioner from the judgment of Judge Seiser of the trial court states:

> The life tenancy deed and the codicil either gave a life estate to Suzanne or ratified the will provisions to that effect.

The Honorable Paul Hellwege, Judge, District Court of Iowa, correctly stated in his decision that this statement was taken out of context and what it really does is:

> . . . Merely expresses what the deed and the will purported to do on their face.

In Iowa, "ademption" occurs when property, either real or personal, which has been specifically devised under a will, is later destroyed or disposed of so it no longer exists as part of the testator's estate at the time of the testator's death. The general rule is that nothing else may be substituted for that which was originally given. *In Re Estate of Wolf*, 208 N.W.2d 923 (Iowa 1973); *Conn v.*

Williams, 353 N.W.2d 411 (Iowa 1984). It has been conclusively determined by the courts that at the time of Ferne R. Clark's death she owned no interest in the real estate and, therefore, could convey no interest therein to the Petitioner, Suzanne Clark. *In Re Estate of Ferne R. Clark*, 447 N.W.2d 549 (Iowa App. 1989).

The last will and testament of Ferne R. Clark is clear and unambiguous on its face. It reads, in part:

> III.
>
> I hereby give, devise and bequeath to my daughter, SUZANNE CLARK, the use of my home, described as Lot Three (3) of Prather's addition to Ames, Iowa, for the remainder of her life, or until she no longer desires to reside therein as her home. During the period of her occupancy, my daughter shall have full responsibility for the expenses of maintenance, operation, and taxes.
>
> IV.
>
> All the rest, residue and remainder of my estate, of every kind or character, wherever situated, I hereby give, devise and bequeath to my children, SHIRLEY C. SMITH, GEORGE H. CLARK III, SUZANNE CLARK, and JUDITH C. KIDDER, share and share alike, the same to be theirs absolutely.

On February 25, 1988, Ferne R. Clark executed a codicil to her will, which read, in part:

> 1 . . . The power and authority granted to my Executor and the judgment and discretion granted to said representative herein shall not be construed nor exercised in such a way as to

> limit or frustrate my intent as expressed in paragraphs 2 and 3 . . .
>
> 3 . . . I further give to my daughter, SUZANNE CLARK, the option to buy my said home, from my Estate or from the other beneficiaries of my Estate, at its appraised fair market value less any debts or liens thereon, said option to be exercised at any time during her life.

It is clear from the express language of the will and codicil that the Petitioner was to receive a life estate in the real estate only. Since the real estate did not exist at the time of the testator's death, there was nothing for Suzanne's life estate to attach.

Suzanne was not to receive a life estate in the proceeds from the sale of the real estate. It is clear from both the will and codicil that the remaining estate of the testator was to be devised to all her children in equal shares. The Supreme Court was correct in determining that the Petitioner, Suzanne Clark, received nothing because at the time of the death of Ferne R. Clark, she owned no interest in the real estate and her will did not give the Petitioner, Suzanne Clark, a life estate in the proceeds from the real estate. All issues have been fully considered by the trial court and now affirmed by the Supreme Court of Iowa. The Petitioner, Suzanne Clark, has been given full due process and it has been fairly and fully determined by the trial court and by the Supreme Court that she had no interest in property.

The cases cited by the Petitioner, Suzanne Clark, are not applicable to the facts or procedures in the instant case. There is no evidence anywhere in the record or any claim that Suzanne Clark did not prevail because she is a

woman. This is simply a last straw claim that has no merit whatsoever which was never raised at any stage of the trial proceedings.

Finally, § 633.385, paragraph 2, Code of Iowa, is not applicable. In order for it to apply, the court would have had to determine that the Petitioner, Suzanne Clark, had an interest in the real estate. This was decided against her in the previous case and no certiorari from that decision was taken to this court and it is the law of the case.

Much of the Petition for Certiorari devotes time and space to the issues of the previous case, which is now fully concluded and is the law of the case. No petition for certiorari was taken from the decision of the prior case and, therefore, there is nothing to review. The only matters at issue before this court are:

1. Did the court properly enter judgment upon the supersedeas bond?

2. Did the Petitioner have an interest in the proceeds received from the sale of the real estate?

Since it was conclusively determined that she had no interest in the real estate, she clearly could have no interest in the proceeds unless she was given a life estate interest by deed or other document, and no such document or deed was presented. This case does not involve matters of special or important interest involving any violation to the Petitioner's Constitutional rights and the Petition for Certiorari should be denied.

CONCLUSION

That the Petition of the Petitioner for writ of certiorari should be denied.

Respectfully submitted,

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